

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 891 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JAWAHARSING LAKHANSING CHAUHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR MUKESH D RAVAL for Petitioner

MR LR PUJARI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 26/10/1999

ORAL JUDGEMENT

#. Heard the learned advocate Mr.M.D. Raval for the petitioner and Mr. L.R. Pujari, learned AGP for respondent nos. 1, 2 & 3. The detention order dated 2.1.99 passed by respondent no.1 - Commissioner of Police, Ahmedabad City in exercise of power conferred under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition under article 226 of

the Constitution of India.

#. That the grounds of detention served to the petitioner under section 9(1) of PASA, copy of which is produced at Annexure : C to the petition inter alia indicate that three criminal cases are registered against the petitioner for the offences made punishable under the Indian Penal Code and the Arms Act. Furthermore, two witnesses on assurance of anonymity have supplied information in respect to nefarious anti-social activity of the petitioner. The detaining authority has observed in the grounds of detention that the petitioner-detenu was released on bail in criminal case registered vide CR No. 27/96 at Vatva Police Station. However, he is in judicial custody in respect to CR No. 3442/98 registered at Vatva Police Station and CR No. 345/98 registered at Maninagar Police Station. The detaining authority has observed that the petitioner is likely to get bail in the above-stated cases and continue his anti-social activity and thereby the impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It has been stated that vide amended para 14(A), a contention has been raised that the detaining authority has failed to consider the less drastic remedy available under section 437(5) of Cr.P.C. while formulating the grounds of detention which has vitiated the subjective satisfaction and has rendered the impugned order invalid.

#. Learned AGP Mr. L.R. Pujari relying on the affidavit of respondent no.2 dated 12th August, 1999 has urged that the petitioner was released on bail in earlier case which was registered in the year 1996. Thereafter the petitioner has continued his criminal activity and offences were registered against him on 18.10.98 and 27.12.98. That on 30.11.98 as well as on 15.12.98, two incidents have occurred for which anonymous witnesses have given information. In view of the said fact, the detaining authority was justified in believing that if the petitioner is not detained, after getting released on bail, the petitioner may continue his anti-social activity and the procedure for cancellation of bail might consume time.

#. The submissions urged on behalf of the respondents could hardly be accepted. It is noteworthy that in the grounds of detention, the detaining authority has shown apprehension that the petitioner-detenu is likely to be released on bail in the cases registered at Vatva and Maninagar Police Stations respectively and thereafter he

is likely to continue his anti-social activity which might prejudicially affect the maintenance of public order. Thus, the subjective satisfaction is purely based on presumption and not on sound logic. It also disclosed that the detaining authority has failed to consider the aspect of cancellation of bail already granted to the petitioner. That this Court in the proceedings of L.P.A. 1056/99 decided on 15.9.99 has accepted the proposition of law that non consideration of less drastic remedy like cancellation of bail under section 437(5) of Cr.P.C. renders the detention order invalid.

#. In the instant case also, despite the amendment of the petition, no further affidavit appears to have been filed on behalf of the respondents and thereby there is nothing on record to infer that the detaining authority has properly applied his mind to the facts placed before him while formulating the grounds of detention. That it clearly appears that the aspect regarding cancellation of bail in a pending case under section 437(5) of Cr.P.C. has not been considered before passing the impugned order which has rendered the impugned order invalid on account of non application of mind.

#. On the basis of the foregoing discussion, the petition is allowed. The impugned order of detention dated 2.1.99 passed by respondent no.1 - Commissioner of Police, Ahmedabad city against the petitioner is hereby quashed and set aside. The petitioner-detenu-Jawaharsing Lakhansing Chauhan is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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